

TEACHERS' RETIREMENT BOARD

REGULAR MEETING

SUBJECT: Washington Representation Contract

ITEM NUMBER: 8

ATTACHMENT(S): 1

ACTION: X

MEETING DATE: February 8, 2001

INFORMATION:

PRESENTER: Ed Derman

SUMMARY

The California State Teachers' Retirement System's (CalSTRS) contract with Hogan & Hartson, L.L.P., to provide legal and advocacy services in Washington, D.C., will expire on June 30, 2001. Staff requests authority to negotiate a sole source contract with Hogan & Hartson, L.L.P., comparable to prior contracts with no more than a 10-15 percent increase over the current contract amount of \$150,000 per year. If approved, the new contract would begin July 1, 2001 and end December 31, 2004, with an optional two-year extension.

BACKGROUND

Since 1990, CalSTRS has retained the services of Hogan & Hartson, L.L.P., to provide legal and advocacy services at the federal level. Among the services Hogan & Hartson has provided in recent years are:

- Legal analyses and advice on the interpretation and application of federal legislation and regulations affecting CalSTRS;
- Representation of CalSTRS position to members of Congress and their staff;
- Preparation of written testimony for Internal Revenue Service (IRS) and Treasury Department hearings having significant importance to CalSTRS' interests;
- Evaluation of the tax and benefit implications of state legislation for the Teachers' Retirement Board (Board), such as the establishment of the Defined Benefit Supplement Program and the Medicare Benefits Program;
- Special services relating to implementation of the Cash Balance Benefit Program, including preparation of a Request for Private Letter Ruling, and the Health Benefits Program, including advice and guidance on the impact of the Internal Revenue Code, as well as other laws and regulations;
- Legal and advocacy services that resulted in a \$320 million settlement with respect to Elk Hills between the Federal government, CalSTRS, and the State of California. Hogan & Hartson have also coordinated efforts to ensure the appropriations for the annual settlement payments of \$218 million that were included in the President's budget for the past three years;

- Advocacy before Congress and the Administration that resulted in an estimated \$15 million in relief from Medicare Part A penalties for CalSTRS; and
- Confidential legal advice to CalSTRS staff and the Teachers' Retirement Board.

The services in the current contract have been structured to include a monthly retainer, with provisions for special projects as needed. The monthly retainer includes, but is not limited to, the following:

- Legal opinions on the possible tax consequences of the Internal Revenue Code;
- Proposed amendments to the Teachers' Retirement Law and the benefit structure of CalSTRS;
- Federal advocacy services on legislation or regulations that may affect CalSTRS, including implementation;
- Legal opinions and advice on federal and state legislation or regulations;
- Identifying and monitoring federal legislation or regulations affecting public pension funds;
- Maintaining cooperative working relations with the California Congressional delegation and associated staff, coalitions, employee organizations, and employer organizations;
- Responding to various inquiries; and
- Providing monthly reports summarizing issues of interest to CalSTRS.
- Special projects as assigned by CalSTRS that are not included in the services covered by the retainer, include:
 - Legal opinions and advice;
 - Testifying at various proceedings on behalf of CalSTRS;
 - Meeting with members of Congress, Committee staff, and other key individuals as appropriate to accomplish specific tasks;
 - Making presentations to the Board, if required; and
 - Preparing special reports on a specified action that could have an adverse impact on CalSTRS.

For the past five years, the contract fees have been structured as follows:

Fiscal Year	Monthly Amount	Special Projects		
		Partners	Associates	Legal Assistants
1996-1997	\$7,200	\$255	\$155	\$80
1997-1998	\$7,700	\$260	\$160	\$85
1998-1999	\$8,000	\$265	\$165	\$90
1999-2000	\$8,000	\$270	\$170	\$95
2000-2001	\$8,000	\$275	\$175	\$100

DISCUSSION

Numerous federal issues continue to face public pension plans. These complicated issues necessitate retaining a knowledgeable and experienced firm to provide legal and advocacy services at the federal level. Hogan & Hartson has been very instrumental in the development of many of the benefit enhancements made to the State Teachers' Retirement Plan and changes to federal law. Hogan & Hartson also has developed a very effective relationship with federal officials that has been extremely beneficial to CalSTRS. A few of the issues that Hogan & Hartson actively monitor for CalSTRS and its membership, include:

- Elk Hills Compensation - Hogan & Hartson have successfully worked on this project since 1991. The settlement with the federal government includes seven installments for a total of \$320 million for CalSTRS and the State of California. Because of the multiple installments, it is necessary to have an advocate coordinate efforts to ensure that the appropriations for the settlement payments are included in the President's budget for each year that a payment is due. It is also necessary to have an advocate continue efforts to acquire the attention from members of Congress to move this appropriation through the House and Senate. These payments from the sale of school lands revenue support purchasing power protection for retired teachers. CalSTRS has received two of the seven installments with a third just approved. There are still four payments outstanding, which warrant the retention of a skilled advocate such as Hogan & Hartson, particularly as we approach the larger payments in the sixth and seventh year.
- Health Benefits Program – With the implementation of this new program, there is a continuing need to keep the Board apprised of issues at the federal level regarding health care in general. One example of Hogan & Hartson's specific activity in this area is the efforts to reduce the surcharges paid by CalSTRS for certain retired members enrolling late into Medicare.
- Mandatory Social Security – Hogan & Hartson continues to assist CalSTRS in efforts to oppose mandatory Social Security coverage for new state and local workers. Mandatory Social Security is seen as a means to shore up an ailing Social Security System that may be overwhelmed by retiring baby-boomers, to the detriment of CalSTRS members and employers.
- Social Security Government Pension Offset and Windfall Elimination Provision - Hogan & Hartson is providing assistance in developing a strategy to minimize the impact of these provisions to CalSTRS' members.

Under Section 10335 of the Public Contract Code and the Board's authority under Proposition 162, CalSTRS may contract for legal services without going through the standard competitive bid process. Based on previous experience, staff believes that if CalSTRS were to issue a Request for Proposal for these services and go through a competitive bid process, the resulting contract would be significantly more expensive than a contract that was negotiated.

Over the life of the contract (since 1996), the monthly retainer for Hogan & Hartson has increased annually by 1.5 percent while the hourly rates increased 1.8 percent. During this same time period, comparable services contracted by other public retirement plans have had an average increase of five to ten percent annually. Staff have every reason to expect that Hogan & Hartson would continue to charge CalSTRS rates that are less than what alternative firms would charge. Because of the exceptional service that Hogan & Hartson has provided over the last ten years (i.e. Elk Hills compensation, mandatory Social Security, Medicare Part A late enrollment penalty reduction and numerous federal legislative proposals with the potential of affecting the State Teachers' Retirement Plan), and their competitive rates, it is to CalSTRS' advantage to continue contracting with Hogan & Hartson.

The current term of the contract is on a fiscal year basis, from July through June. This terminates the contract in the middle of the congressional session. If, in the future, CalSTRS should decide to secure alternative legal and advocacy services, a change in the middle of a session could disrupt ongoing discussions with Congress. In order to minimize the disruption if such a change should occur in the future, the proposed contract should be set to expire at the end of a calendar year. In addition, consistent with the contract now expiring, staff recommends the proposed contract have a term of three years and six months, with an optional two-year extension.

RECOMMENDATION

Staff believes it makes good business sense to continue the services provided by Hogan & Hartson based on the aforementioned, therefore, staff is recommending the Board authorize staff to:

1. Enter into a new contract with Hogan & Hartson, L.L.P. effective July 1, 2001.
2. Put the term of the contract on a calendar year schedule as opposed to a fiscal year, which makes the contract term July 1, 2001 through December 31, 2004, with an optional two-year extension.
3. Negotiate contract rates that are no more than 10-15 percent over the current amount.

PROPOSED
RESOLUTION
OF THE
TEACHERS' RETIREMENT BOARD

SUBJECT: WASHINGTON REPRESENTATION CONTRACT

RESOLUTION NO.: _____

WHEREAS, the Teachers' Retirement Board is responsible for administering the California State Teachers' Retirement System; and

WHEREAS, administration of the California State Teachers' Retirement System includes protecting the interests of members of the State Teachers' Retirement System before Congress; and

WHEREAS, the California State Teachers' Retirement System's current contractual agreement with Hogan & Hartson to provide legal and congressional advocacy services in Washington, D.C., is scheduled to complete its term on June 30, 2001; therefore, be it

RESOLVED, that the Teachers' Retirement Board adopts staff's recommendation as follows:

To enter into a contract with Hogan & Hartson effective July 1, 2001 through December 31, 2004 with an option to extend the term for two additional years; and increase contract rates by no more than 10-15 percent.

Adopted by:
Teachers' Retirement Board
On February 8, 2001

James D. Mosman
Chief Executive Officer